

May 10 2011

The attachment hereto is filed by the below parties in the FCC EB docket No. 11-71, since the attached is in a court case involving the parties listed below and Maritime Communications/ Land Mobile LLC ("Maritime") and due to the relevance of certain matters in this court case to the hearing designed by FCC 11-64 (which initiated docket 11-71) and vice versa.

A copy of the Complaint in this case is available on PACER and here:
<http://www.scribd.com/doc/49192121/Skybridge-v-MCLM-PSI-USDC-NJ-2011-Amended-Complaint-Sc>

Submitted on EFCS by:

[/w/](#)

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FILED VIA ECF

The Honorable Katharine S. Hayden, U.S.D.J.
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**Re: Skybridge Spectrum Foundation, et al. v. Mobex Network Services, et al.
Civil Action No. 2:11-cv-00993 (KSH) (PS)**

Dear Judge Hayden:

On behalf of Plaintiffs in this matter, we wish to call to Your Honor's attention a recent decision of the FCC involving some of the parties in this case. A copy of the decision is attached hereto as Exhibit A.

This is an FCC Order to Show Cause against Defendant Maritime Communications/ Land Mobile LLC (sometimes also called "Maritime"), FCC 11-64 (April 19, 2011) (the "OSC") issued by the full Commission based on a multi-year investigation by the FCC Enforcement Bureau. The "Petitioners" described in the OSC of the proceedings that led to the investigation (and then continued in parallel) are all of the Plaintiffs in this case (e.g., see highlighted items). For the reasons set forth below, we believe that this decision is appropriately subject to judicial notice since it has relevance to the pending motion to dismiss, and well as the underlying Second Amended Complaint. Also, we respectfully request leave to file a short brief, if Your Honor believes that might be helpful, as to the relevance of the decision.

As noted in the attached OSC, the FCC has been investigating Maritime's conduct in connection with its FCC licenses since an August 2005 auction (Auction 61) in competition with two Plaintiffs. (Exhibit A, OSC ¶5, ¶13). The OSC identifies extensive inconsistencies among Maritime's representations before the FCC to obtain and keep licenses, and also between those and its representations contained in its other governmental and court filings. (OSC ¶¶19-20). "Given the lingering questions about Maritime's entitlement

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to a bidding credit in Auction No. 61 and Maritime's dilatory disclosures about the full range of Donald DePriest's interests, WTB referred the matter to the Enforcement Bureau ("EB") for investigation in late 2009." (OSC ¶23). The OSC reviews 6 years of filings and conduct by Defendant MCLM and affiliated parties that the FCC has determined raised "grave concerns" about whether Defendant MCLM "falsely certified to such eligibility, and willful violation of section 1.2105." (OSC ¶51). Accordingly, the FCC has followed its own notice provisions to issue an order as to why identified licenses should not be revoked. (OSC ¶62).

The OSC is properly subject to judicial notice because it bears upon Defendants' motion to dismiss, including the "Joint Reply Brief" filed on April 5, 2011, alleging, inter alia, that Plaintiffs have (i) asserted the same claims before the FCC and (ii) those claims "have been rejected already." (Reply Memo pp. 1-2, Doc No. 14). The Court does not need to weigh into the record before the FCC in order to determine that Defendants' statements are, at best, inaccurate as to Maritime and its current licenses: the OSC addresses Defendant Maritime's allegations as to what the FCC has or has not "rejected" or otherwise determined, and in addition, the OSC determinations are against Maritime and in favor of Plaintiffs ("Petitioners" in the OSC). Further, (i) whereas the Complaint alleges that certain licenses held by Defendants automatically terminated and were cancelled in a past FCC audit, those cancelled licenses are not part of the OSC proceedings; (ii) whereas the Complaint alleges violations of the Cooperation Orders requiring disclosure to Plaintiffs of Defendants' licensed stations' actual technical parameters, Cooperation Orders matters are not part of this OSC; (iii) whereas the OSC describes certain anti-competitive actions by Maritime and its principals, those are not the gist of the Sherman Act violations described in the Complaint (nor does the FCC prosecute Sherman Act violations); and (iv) the OSC does not directly address conduct of Defendant PSI.

Further relevance of the OSC is its identifying significant evidence of the same character as many of the contentions raised in Plaintiff's Complaint and their Opposition to Defendants' motion to dismiss. The OSC describes actions other than in the Complaint but that are similar in character and thus relevant. (*i.e.*: various unreasonable, unlawful and damaging actions that may be subject to court actions for injunctive and damage relief under 47 U.S.C §§ 401(b) 206 and §207 (see also §313)). This is contrary to Defendants' self-portrayal in their motion and selective exhibits. For example, see ¶¶ 3, 5, 28, 32, 43, 48. The FCC OSC also gives significant evidence of Plaintiffs' assertions in and recovery concerns behind ¶¶ 8 and 9 and related footnotes of the Complaint. For example, see ¶¶ 4, 49, 41, 65, 51 49. The six years it took for the FCC to reach this OSC decision also reflects why court action is a practical necessity in many cases, apart from these statutory rights.

Respectfully Submitted,

/s/ R. N. Tendai Richards

R.N. Tendai Richards

cc: Counsel of record (Via ECF)